

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

TONY TEAL

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VS.

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**SAM'S EAST, INC. D/B/A SAM'S CLUB
#8286, SAM'S WEST, INC. D/B/A SAM'S
CLUB #8286, WALMART, INC. D/B/A
SAM'S CLUB #8286, WAL-MART
STORES TEXAS, LLC D/B/A SAM'S
CLUB #8286, WAL-MART STORES
EAST, LP D/B/A SAM'S CLUB #8286,
AND REALTY INCOME PROPERTIES
25, LLC D/B/A SAM'S CLUB #8286**

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CIVIL ACTION NO.

JURY

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Sam's East, Inc., Sam's West, Inc., Walmart Inc., Wal-Mart Stores Texas, LLC, Wal-Mart Stores East, LP (unnecessary parties; Sam's East, Inc. is the only necessary party), and Realty Income Properties 25, LLC ("Defendants") file this Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1332.

I. INTRODUCTION

1. Pursuant to 28 U.S.C. § 1441, *et seq.*, this civil action is removed from the 170th Judicial District Court of McLennan County, Texas, where this matter was pending under Cause No. 2020-2542-4 in a matter styled *Tony Teal vs. Sam’s East, Inc. d/b/a Sam’s Club #8286, Sam’s West, Inc. d/b/a Sam’s Club #8286, Walmart Inc. d/b/a Sam’s Club #8286, Wal-Mart Stores Texas, LLC d/b/a Sam’s Club #8286, Wal-Mart Stores East, LP d/b/a Sam’s Club #8286, and Realty Income Properties 25, LLC* (the “State Court Action”).

II. NATURE OF THE SUIT

2. This is a premises liability lawsuit alleging personal injury resulting from claims of negligence against Defendants. *Plaintiff's Original Petition*, pp. 3-4.

3. Plaintiff Tony Teal alleges that on September 28, 2018, he slipped and fell in a liquid substance on the floor while shopping at the Sam's Club. *Id.* at p. 3.

4. Plaintiff brought premises liability claims against Defendants in the 170th Judicial District Court of McLennan County, Texas. *Id.* at p. 4.

III. TIMELINESS AND CONSENT OF REMOVAL

5. Plaintiff commenced this lawsuit by filing his Original Petition on August 17, 2020. The Sam's and Walmart Defendants accepted service on September 2, 2020 through their agent, CT Corporation. Realty Income Properties 25 accepted service on September 2, 2020 through its agent, CSC-Lawyers Incorporating Service Company. This removal is timely because it is filed less than 30 days after Defendants were served. 28 U.S.C. § 1446.

IV. BASIS FOR REMOVAL JURISDICTION

6. Removal is proper under 28 U.S.C. §§ 1441 and 1332 because there is complete diversity of citizenship between Plaintiff and Defendants and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

7. Plaintiff is now and was at the time of the filing of this action a legal Texas resident residing and domiciled in Dallas County, Texas. *Plaintiff's Original Petition*, p. 1. Accordingly, for diversity purposes, Plaintiff is a citizen of Texas.

8. Plaintiff sued Sam's East, Inc. and Sam's West, Inc. Defendant Sam's East Inc. is now and was at the time of the filing of this action an Arkansas corporation with its principal place of business in Arkansas. Sam's East, Inc. is a wholly owned subsidiary of Walmart Inc. Sam's West, Inc., also an Arkansas corporation, is the sole shareholder of Sam's East, Inc. with its principal place

of business in Arkansas. Accordingly, for diversity purposes, Sam's is a citizen of Arkansas. Sam's East, Inc. is the only necessary party.

9. Plaintiff also sued and served Walmart Inc. d/b/a Sam's Club #8286 – not a necessary party. Defendant Walmart Inc. is now and was at the time of the filing of this action a Delaware Corporation with its principal place of business in Arkansas. Accordingly, for diversity purposes, Wal-Mart is a citizen of Delaware or Arkansas.

10. Plaintiff also sued and served Wal-Mart Stores Texas, LLC and Wal-Mart Stores East, LLC – not necessary parties. Defendant Wal-Mart Stores Texas, LLC is now and was at the time of the filing of this action a Delaware Limited Liability Company with its principal place of business in Arkansas. The citizenship of an LLC is the same as the citizenship of all its members. *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008). Wal-Mart Real Estate Business Trust is the sole member of Wal-Mart Stores Texas LLC. Wal-Mart Real Estate Business Trust is a statutory business trust organized under the laws of Delaware with its principal place of business in Arkansas. Wal-Mart Property Co. is the sole trustee of Wal-Mart Real Estate Business Trust. Wal-Mart Property Co. is a Delaware corporation with its principal place of business in Arkansas. Wal-Mart Stores East, LP is the sole owner of Wal-Mart Property Co. Wal-Mart Stores East, LP is a Delaware Limited Partnership with its principal place of business in Arkansas. WSE Management, LLC is the general partner, and WSE Investment, LLC is the limited partner of Wal-Mart Stores East, LP. WSE Management, LLC and WSE Investment, LLC are both Delaware Limited Liability Companies with their principal place of business in Arkansas. The sole member of WSE Management, LLC and WSE Investment, LLC is Wal-Mart Stores East, LLC. Wal-Mart Stores East, LLC is a limited liability company organized under the laws of the State of Arkansas with its principal place of business in Arkansas. Walmart Inc. is the sole owner of Wal-Mart Stores

East, LLC. Walmart Inc. is a Delaware Corporation with its principal place of business in Arkansas. Accordingly, for diversity purposes, Wal-Mart is a citizen of Delaware or Arkansas.

11. Plaintiff also sued and served Realty Income Properties 25, LLC – not a necessary party. Realty Income Properties 25, LLC is a Delaware limited liability company that is wholly owned by Realty Income Corporation, a Maryland corporation. Accordingly, for diversity purposes, Realty Income Properties 25, LLC is a citizen of Delaware or Maryland.

12. There is and has been at all times relevant to this Notice of Removal, complete diversity of citizenship between Plaintiff and Defendants.

13. Upon information and belief, it is facially apparent the amount in controversy exceeds the jurisdictional requirement of \$75,000.00, exclusive of interest and costs. Plaintiff alleges he was seriously injured. *See Plaintiff's Original Petition*, p. 3. Plaintiff seeks damages for medical care and expenses past and future, mental anguish past and future, physical pain and suffering past and future, and physical impairment past and future. *Id.* at pp. 3-4. Plaintiff's Original Petition filed August 17, 2020 alleges Plaintiff seeks monetary relief over \$200,000.00 but not more than \$1,000,000.00. *Id.* at p. 1. The sum claimed by Plaintiff should control the evaluation, and Defendants can rely on the amount plead to exceed the minimum jurisdictional amount. Facially, the pleadings, injuries and damages will exceed \$75,000.00, exclusive of interest and costs.

14. In an effort to confirm the amount in controversy, Defendants sent correspondence to Plaintiff's counsel on September 3, 2020 requesting Plaintiff stipulate he is seeking less than \$75,000.00 in damages, exclusive of interest and costs. Plaintiff's counsel confirmed on September 28, 2020 he was unable to stipulate due to his client's injuries; thus, there is a presumption that the amount in controversy in this case exceeds \$75,000 exclusive of interest and

costs. *Heitman v. State Farm Mut. Auto. Ins. Co.*, No. 3:02-CV-0433-D, 2002 U.S. Dist. LEXIS 6192 (N.D. Tex. April. 9, 2002).

VI. THIS NOTICE IS PROCEDURALLY CORRECT

15. This action may be removed to this Court pursuant to 28 U.S.C. § 1441(b), because Defendants are not citizens of Texas, the state in which the action was brought. This action is removable to this Court and venue is proper because this United States District Court and Division embraces the place where the State Court Action was pending. 28 U.S.C. §§ 124(a)(1), 1441(a).

16. Defendants have attached to this Notice of Removal the documents required by 28 U.S.C. § 1446:

- A: Index of all documents filed in the State Court Action.
- B: Docket Sheet in the State Court Action.
- C: Copies of all process, pleadings and orders filed in State Court.
- D: Signed Disclosure Statement and Certificate of Interested Persons.

17. Defendants are filing with the Notice of Removal a completed Civil Cover Sheet, a Supplemental Civil Cover Sheet, and separate Disclosure Statement and Certificate of Interested Persons.

18. Defendants retain the right to supplement the jurisdictional allegations by affidavit, declaration, or otherwise should Plaintiff challenge the allegations in a motion to remand or other filing.

19. In accordance with 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will be given to all parties and to the Clerk of the 170th Judicial District Court of McLennan County, Texas.

20. Plaintiff has demanded a jury trial in the State Court Action. Defendants have demanded a jury trial in the State Court Action.

21. Trial has not commenced in the 170th Judicial District Court of McLennan County.

VII. CONCLUSION

22. Since diversity jurisdiction exists over Plaintiff's claim as set forth in Plaintiff's Original Petition, and because Plaintiff's claims exceed the jurisdictional threshold, Defendants desire and are entitled to remove the lawsuit filed in the 170th Judicial District Court of McLennan County, Texas to the United States District Court for the Western District of Texas, Waco Division.

WHEREFORE, PREMISES CONSIDERED, Defendants Sam's East, Inc. d/b/a Sam's Club #8286, Sam's West, Inc. d/b/a Sam's Club #8286, Walmart Inc. d/b/a Sam's Club #8286, Wal-Mart Stores Texas, LLC d/b/a Sam's Club #8286, Wal-Mart Stores East, LP d/b/a Sam's Club #8286, and Realty Income Properties 25, LLC, pursuant to and in conformance with the statutory requirements, remove this action from the 170th Judicial District Court of McLennan County, Texas, to this Court.

Respectfully submitted,

By: /s/ Ramona Martinez
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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify a true and correct copy of this document has been forwarded to the following counsel for Plaintiff either by e-service, telefax, electronic mail, and/or regular U.S. mail on this 30th day of September, 2020:

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